IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINETH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.17198 of 1998

Between:

Smt.B.Ansuja, W/o late Sri B.Krishna,
O/o The Asst.Divisional Engineer, Distribution XII,

City VIII, APSEB,
Santhoshnagar, Hyderabad.

..... PETITIONER

AND

1 The Member Secretary, A.P.S.E.B., Vidyuth Soudha,
Somajiguda, Hyderabad
2 The Divisional Engineer, Operation Zone-III, APSEB,
Mint Compound, Hyderabad
3 The Superintending Engineer, Operation City Circle,
Mint Compound, Hyderabad
4 The Assistant Divisional Engineer, Distribution XII, City VIII, APSEB,
Sanathoshnagar, Hyderabad
5 The Chairman & MD,
AP Transco, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in not absorbing the petitioner in the post of Full Time sweeper even though the petitioner was appointed on compassionate grounds and continuing the petitioner as Part-time Sweeper with meagre salary without giving minimum time scale of pay for the last 24 years, is highly arbitrary, illegal and unconstitutional and consequently direct the Respondents to absorb the petitioner as Full Time Sweeper in the existing

vacancies with retrospective effect from the date of her initial appointment i.e. from 1973 with all consequential benefits of arrears of salary, seniority etc.

Counsel for the Petitioner: Mr. KRISHNA MURTHY ATTIVILLI

Counsel for the Respondents: Mr. S.RAVINDRANATH

The Court made the following :

O R D E R:

This Writ Petition is filed seeking a Mandamus to declare the action of the respondents in not absorbing the petitioner in the post of full time Sweeper even though she was appointed on compassionate grounds and being continued as part-time Sweeper with a meagre salary without giving minimum time scale of pay for more than 24 years as highly arbitrary, illegal and unconstitutional and consequently to direct the respondents to absorb the petitioner as full time Sweeper in the existing vacancies with retrospective effect from 1973 with all consequential benefits.

This is an unfortunate case. The husband of the petitioner died in harness while working in the respondent-organization on 24-5-1973. Therefore, she was considered sympathetically for being appointed in the post of Sweeper with a consolidated salary of Rs.20/-+5/- per month under G.O.No.SE/OP/Estt/Rev/Cong/1225/73, dated 25-8-1973 and since then she has been engaged as a contingent sweeper. It is her case that as of now she is getting a remuneration of Rs.400/- per month and she has not been given the minimum time scale attached to the post of full time Sweeper. She is entitled for being appointed to the full time Sweeper post in the respondent-organization. She made several representations dated 16-4-1974, 29-11-1974, 26-12-1975 and 8-8-1979 with a request to consider her case for absorption as full time Sweeper in the then existing vacancies. But, the said representations did not yield any result. Further, she was transferred and posted along with the post to the control of Divisional Engineer (Operation) Zone III, Hyderabad vide Memo dated 29-11-1984. Again, she was reposted along with the post to work under the control of the Assistant Divisional Engineer Distribution XII, Zone III, Mogulpura, Hyderabad, vide Office Order dated 11-12-1984. Though she has been named as a contingent Sweeper (part-timer), she has been working from morning to evening like any other full time sweeper. She has also asserted that the part-time employees, who were appointed much later to her, were absorbed as full time employees and they are getting minimum time scale. Therefore, the action of respondents in not absorbing her services as a full time

sweeper is arbitrary and illegal.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is *inter alia* asserted that the petitioner was not appointed on compassionate grounds. The scheme of compassionate appointment was introduced during the year 1979 vide B.P.Ms.No.438,dated 24-6-1975; whereas, the petitioner was appointed as part-time contingent sweeper in the year 1973 i.e. much before the scheme was introduced. Further, in Memo No.MPS/DM-1/4514-C3/76-1, dated 17-2-1978, it was clearly stated that orders issued in B.P.Ms.No.438, dated 24-6-1975 do not have retrospective effect and that the application for appointment from the son/daughter/spouse of the employee died in harness after 24-6-1975 alone has to be considered. The petitioner herself is well aware of this fact of her non-eligibility for compassionate appointment. Further, she cannot compare herself with other Sweepers like Smt. Yadamma, Sweeper, Smt. Radha, Sweeper and Smt. Chandrakala, Attender, since they were appointed under compassionate scheme, which was available after 24-6-1975. Therefore, the petitioner cannot compare her case with those sweepers, who were appointed on compassionate grounds after 24-6-1975. Since the compassionate scheme was not available when the husband of the petitioner died, she was appointed on contingent basis. Therefore, she is not entitled for regular absorption. The Writ Petition is devoid of merits and liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

At the outset, I am of the opinion that the approach adopted by the respondents is atrocious and arbitrary. Admittedly, the husband of the petitioner died in harness while working with the respondent-institution on 24-5-1973. May be, a concrete scheme for compassionate appointment was not available and the petitioner was appointed on humanitarian grounds as a contingent sweeper. That itself does not mean that her case could not be considered for regular appointment on par with those three Sweepers/Attender on the ground that when the petitioner was appointed, the scheme of compassionate appointment was not available. Except this, what all the petitioner has stated is not denied. Further, it is stated that the Superintending Engineer was permitted to employ sweepers on contingent basis and it is against one of those contingent posts, the petitioner was appointed. The

appointment of the petitioner was not against a regular post and she was not put on time scale. Therefore, the stand of the respondents that the petitioner cannot claim status on par with Smt. Yadamma, Sweeper, Smt. Radha, Sweeper and Smt. Chandrakala, Attender, since those three persons were appointed on compassionate grounds in view of the death of their spouse while serving the organization and under the scheme available, is most unfortunate. Whether there was a scheme or no scheme, the case of the petitioner was considered for appointment on contingent basis and when the scheme was introduced with effect from 24-6-1975 nothing prevented the respondents from converting the services of the petitioner to that of a full time sweeper. It is also not the case of the respondents that since regular vacancies were not available, she could not be absorbed as a full time sweeper. As of now, the petitioner has completed more than 32 long years of service. It is not the case of the petitioner that she is not entitled for being absorbed as a full time sweeper and there are any complaints against her during this long service of 32 years. Denial of regularization and not putting the petitioner on regular pay scale amounts to unfair labour practice on the part of the respondents. After serving for more than 32 years, the petitioner cannot be denied regularization of service on the ground of technicalities. The petitioner is entitled for regularization of her services.

For all the above reasons, I am of the opinion that the petitioner is entitled for being absorbed as a full time sweeper on par with the said three lady sweepers/attender from 4-2-1989 with all notional benefits, such as, increments, seniority etc., in the post of sweeper.

In the result, the Writ Petition is disposed of directing the respondents to consider the case of the petitioner for absorption of her services as full time sweeper with effect from 4-2-1989 with all consequential notional benefits, such as increments, seniority etc., and pass appropriate orders, within a period of two months from the date of receipt of a copy of this order. No order as to costs.

29-8-2005

prk